

## **Section 42A Report Overview**

### **CHAPTER 10: Historic Heritage (Waahi Tapu)**

**Prepared by Jerome Wyeth, consultant planner**

#### **1. Introduction**

- 1.1 Chapter 10 (Historic Heritage) of the Kapiti Coast Proposed District Plan (PDP) covers the identification, protection and management of historic heritage, including a number of scheduled buildings, areas, trees, and waahi tapu sites.
- 1.2 However, in terms of reporting and hearings, the Section 42A report only deals with the waahi tapu provisions and the schedule of waahi tapu sites in Chapter 10. The rest of the submissions on Chapter 10 have been addressed in a separate Section 42A report prepared in April 2016 and heard by the Panel in May 2016.
- 1.3 There were a number of submissions on the waahi tapu provisions in Chapter 10 and the schedule of waahi tapu in Chapter 10 (approximately 71 submission points from 42 submitters and approximately 222 further submissions from 24 submitters). Submissions sought a range of outcomes which can be broadly grouped into those that relate to waahi tapu provisions and those that relate to waahi tapu sites.
- 1.4 The scheduling of waahi tapu sites attracted the most interest with submissions both supporting the identification of waahi tapu and also opposing the scheduling of specific sites. The submissions in opposition were largely focused on the following sites: Kaiwarehou (WTS0206), Makahuri (WTS0137), Taumānuka (WTS0127B), and Taewapirau (WTS0318). There is also a submission seeking the Takamore waahi tapu (W4) area to be extended.
- 1.5 As noted throughout my Section 42A Report, I am not an expert in archaeology or in the identification of waahi tapu as I believe this responsibility lies with tāngata whenua. The identification and scheduling of waahi tapu in the PDP has been an extensive process which began back in 2010 with the research led by Pataka Moore working with the three iwi in Kāpiti.
- 1.6 In 2015, Mr Kahotea was commissioned to review this methodology and undertake a more detailed review of the waahi tapu sites that were opposed in submissions. Mr Kahotea will also be providing an opening statement alongside this statement to explain his research and findings.

#### **2. Report Structure**

- 2.1 The first two sections of the Section 42A Report provide an introduction to the report, and outline the key statutory considerations. This section highlights the provisions in section 6(e), 6(f), 7(a) and 8 of the Resource Management Act 1991 (RMA) which provide strong directives to identify historic heritage sites (including waahi tapu) in district plans, and to ensure these sites are given an appropriate level of protection. It also highlights the clear obligations in Part 2 of the RMA to recognise and provide for the relationship of tāngata whenua with their ancestral lands and waahi tapu
- 2.2 Section 3 of the Section 42A Report identifies the matters raised by submissions, provides an assessment of issues raised and relief sought, and recommendations to accept, accept in part, or reject each submission point (including further submissions).

It also outlines any recommended amendments to the PDP as a result of the submissions.

- 2.3 For efficiency and in accordance with Clause 10(3) of the First Schedule to the RMA, the assessment of submissions in the Section 42A Report has been undertaken on both an issues and provisions-based approach, as opposed to a submission by submission approach.
- 2.4 As a result, section 3 is broken down into 15 sub-sections, which relate to topics, provisions and waahi tapu sites. Table 1 provides an overview of the submission topics and where these can be located within the Section 42A Report.

Table 1: Issues and topics addressed in the Section 42A Report.

Issue Topic	Section 42A Report Section
Waahi tapu provisions – general support	Section 3.3
Policies 10.1, 10.2, 10.10	Section 3.4-3.6
Grouping of waahi tapu	Section 3.7
Permitted activity conditions	Section 3.8-3.9
Notification clause	Section 3.10
Matters of control and discretion	Section 3.11
Restricted discretionary activities	Section 3.12
Non-complying activities	Section 3.13
Waahi tapu schedule – general	Section 3.14
Waahi tapu schedule – Kaiwarehou	Section 3.15
Waahi tapu schedule – Makahuri	Section 3.16
Waahi tapu schedule – Takamore	Section 3.17
Waahi tapu schedule – Taewapirau	Section 3.18
Waahi tapu schedule – Taumānuka	Section 3.19
Waahi tapu schedule – Te Pou o Tainui	Section 3.20

- 2.5 Section 4 of the Report shows each of the recommended amendments in the context of a marked up version of Chapter 10 of the PDP. Section 5 of the report is a table which sets out the recommendations to each of the submission points that have been considered as part of the Section 42A Report.
- 2.6 The report also includes three appendices which provide specific information on the process to identify waahi tapu sites through the PDP process, and feedback from Te Ohu Taiao. Throughout the Section 42A report, I emphasise the importance of these assessments and associated waahi tapu site reports in informing the recommendations in my report.

### 3. **Key Submission Issues/Topics**

- 3.1 The different topic and issues for the Chapter 10 (waahi tapu) hearing are identified in Table 1 above. Without derogating from the details of the submissions, the main issues raised in submissions and discussed in the Section 42A Report can be summarised as:

- **The grouping of waahi tapu sites:** clarification of the waahi tapu groups in the PDP to provide greater certainty on their values and the level of protection sought;
- **Permitted activity conditions:** clarifying the amount of land disturbance permitted and activity status;

- **Notification clause:** recommendation that this clause is removed in response to concerns it is overly restrictive and to address some legal issues;
- **Matters of control and discretion:** refining the list of matters to be more refined and adding the “key access and viewpoints” into the list of considerations; and
- **Waahi tapu sites:** the process to identify and schedule the waahi tapu sites in the PDP was supported and opposed in submissions. This process is outlined in more detail in the [Appendix A](#) and [Appendix B](#) of the Section 42A Report and will be discussed by Mr Kahotea in his opening statement.

#### 4. **Matters Resolved**

4.1 There are several submitters that have indicated that they no longer have an interest in appearing at the hearing. Evidence has also been received from **262 Maypole Environmental Limited** and **460 Heritage NZ** and there are some areas where they have advised that they support or accept the recommendations in my Section 42A Report. The main matters resolved relate to:

- **Policy 10.10:** Maypole Environmental Limited support the proposed amendments to Policy 10.10 and considers that these are more consistent with section 6 of the RMA;
- **Land disturbance:** Maypole Environmental Limited and Heritage NZ both support clarification of the 10m<sup>3</sup> threshold for land disturbance to apply to a calendar year. However, Heritage NZ still consider that a higher activity status is required on Group B and D waahi tapu sites that contain urupā which is discuss further below;
- **Ngarara Zone:** Maypole Environmental Limited support the recommended “avoidance of doubt” clause in Rule 10A.1.6 to make it clear that additional consent is not required for development which is in accordance with resource consent granted for a Neighbourhood Development Plan; and
- **Taumanuka: 557 Daniel Castle** (now represented by Jude Harris/Ian Hadfield) requested that the waahi tapu be amended to exclude his property. The work of Mr Kahotea identified that his property was actually in a different block originally and recommends that his property be removed from Taumānuka waahi tapu. I support this recommendation.

4.2 The evidence of Heritage NZ also states that, unless otherwise stated, Heritage NZ supports the recommendations in the Section 42A Report regarding its submission points and recommends these be adopted.

#### 5. **Matters Unresolved**

5.1 The matters unresolved relate to the scheduling of waahi tapu sites and certain waahi tapu provisions.

##### Waahi Tapu Provisions

5.2 In terms of the waahi tapu provisions, the main matters unresolved relate to:

- **Policy 10.2:** Maypole Environmental Limited seek that Policy 10.2 be amended so that the criteria are refined and robust evidence is required on more than one criteria to establish significance. The Historic Heritage (excluding Waahi Tapu) Section 42A Report recommended that this submission be rejected as it was considered that Policy 10.2 is consistent with Policy 21 of the RPS which refers to “one or more” criteria;

- **Land disturbance:** Heritage NZ considers that the permitted activity status for land disturbance in Group B is too permissive. They consider that a higher consent status (restricted discretionary) should apply to waahi tapu sites in Group B and D that contain urupā, similar to the protection in Group A waahi tapu. They also request an amendment to the rules so that Heritage NZ is given notified 10 days prior to land disturbance is occurring to facilitate the archaeological authority process;
- **Notification and Policy 10.10:** Heritage NZ supports the recommended deletion of the notification clauses in Chapter 10. However, they seek amendments to Policy 10.10 to also include Heritage NZ in the partnership arrangement to be consulted on all resource consent applications affecting waahi tapu;
- **Matters of Control and Discretion:** Heritage NZ considers that building design, colour and materials can cause adverse effects on waahi tapu sites and requests this matter be retained in the Plan; and
- **Key access and viewpoints:** Heritage NZ seeks for this to be retained as a rule rather than a matter of discretion as recommended in the Section 42A Report. They consider that having these areas as a matter of control or discretion would create a gap for buildings and structures that are permitted activities.

#### Waahi Tapu sites

- 5.3 As noted in my Section 42A Report I am not a cultural expert or an expert in archaeology. My assessment of the cultural significance of waahi tapu is therefore heavily reliant on the relevant cultural assessments and the views of iwi.
- 5.4 However, I consider that the work of Pātaka Moore, the ongoing input of iwi into the identification of waahi tapu in the PDP, and the independent review by Mr Kahotea provides a level of confidence that the waahi tapu sites in the PDP have high cultural significance and warrant an appropriate level of protection. This is also important to implement Policy 10.10 and meet Councils' obligations under Part 2 of the RMA.
- 5.5 However, I also acknowledge the concerns of submitters who have land affected by a scheduled waahi tapu in the PDP and I recognise that this can have significant impacts on private property rights. The waahi tapu sites with matters still unresolved in submissions are:
- **Kaiwharehou:** two landowners (**John Rice 344** and **Paula Keene 350**) made a number of submission points about the scheduling of Kaiwharehou on their property and will speaking at the hearing today to outline their submission further;
  - **Makahuri:** the scheduling of this site was opposed by 16 submitters. Two submitters with property affected by the waahi tapu (**78 Peter Brownie** and **171 Brownie Trust**) will be speaking at the hearing today to explain their submission further;
  - **Taewapirau:** the scheduling of this site was opposed by three submitters who all own property affected by the waahi tapu (**2 Waikanae Golf Club**, **263 Maypole Environmental Limited**, and **272 Te Anau Trust**). Waikanae Golf Club will be presenting today whereas Maypole Environmental Limited and Te Anau Trust will be presenting on Friday; and
  - **Takamore:** **460 Heritage NZ** request that the Takamore waahi tapu area in the PDP be extended to match that registered under the Heritage New Zealand (Pouhere Toanga) Act 2014. This was opposed in further submission 177 from **Waikanae Christian Holiday Park**. However, since this time there has been

ongoing discussions between these submitters and Takamore to help achieve an agreed outcome for the site.

## **6. Issues I would like to draw to the Panel's Attention**

- 6.1 It has been highlighted in my Section 42A Report that it is very difficult to precisely define the boundary of waahi tapu sites and there will inevitably be some degree of uncertainty. As outlined in Mr Kahotea's report, this relates to the nature of pā on the Kāpiti Coast which are built on sand and have been subject to modification and therefore do not resemble typical pā sites elsewhere. He also emphasises that iwi view pā as a cultural construct rather than purely physical construct in the archaeological sense.
- 6.2 I would like to draw the Panel's attention to these point which Mr Kahotea will discuss further in this statement. I would also like to make some comments on two waahi tapu sites which have been subject to more recent developments and discussions.

### Taewapirau

- 6.3 The Section 42A Report highlights that there is some uncertainty some uncertainty about the exact boundaries of Taewapirau and some inconsistencies in the various historical, cultural and archaeological assessments of the site that have been undertaken. In particular, there is some dispute as to whether the site is a pā as identified in the work of Pataka Moore and recorded in the PDP.
- 6.4 I note that the evidence of Maypole Environmental Limited includes planning advice from Chris Hassen, cultural advice from Morrie Love and archaeological advice from Kevin Jones. They conclude that there is no evidence to support Taewapirau as a pā or waahi tapu and therefore the PDP should be amended accordingly.
- 6.5 In my view, the cultural significance of Taewapirau should be determined and clarified by Te Ātiawa representatives in the first instance as they have the cultural and historical connection with the site. I understand this has been the subject of recent discussions within the iwi and Te Ātiawa will be presenting at the hearing. This may provide an opportunity to confirm the most appropriate boundary for Taewapirau.

### Takamore

- 6.6 As noted in the Section 42A Report, there has been ongoing discussions between Waikanae Christian Holiday Park and Takamore Trust to reach an agreed position about the future management of Takamore focusing on how best to recognise and protect the cultural values associated with Takamore.
- 6.7 At the time of writing my Section 42A Report and preparing this statement, these parties had not reached a formal agreement. However, it is understood that both parties and Heritage NZ will provide additional comment and evidence at the hearing. It is also likely that Takamore Trust will have received independent planning advice they sought on the waahi tapu rules in the PDP. This advice may be able to be discussed at the hearing which may then provide an opportunity to explore an agreed rule framework for the extended Takamore waahi tapu area.

## **7. Conclusion**

- 7.1 The Section 42A report sets out and considers the main issues raised in submissions on the waahi tapu provisions in Chapter 10 of the PDP. However, there is obviously a

need to consider the submissions in their entirety before final recommendations can be made.

- 7.2 I am aware that a number of submitters intend on presenting at the hearing and providing additional comment and evidence to support their submission. I also understand that representatives from Te Ātiawa and potentially other iwi will be presenting at the hearing. This additional evidence and discussion of the cultural significance of waahi tapu will be valuable to inform decisions on the PDP.
- 7.3 At this stage I am not recommending any further changes to my report. However, I will obviously listen objectively to evidence presented in this hearing and, as a result, I may alter my position on some matters. This will be outlined in my officers response following the conclusion of this hearing

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